

**REMARKS/ARGUMENTS**

Claims 1-8, 10-48, 50, 51 and 53-55 are pending in the application. The Examiner has allowed claims 37-48, 50, 51 and 53. The Examiner has rejected claims 1-3, 5, 6, 10-14, 19, 23-33, 35, and 54 and 55. The Examiner has objected to claims 4, 7, 8, 15-18, 20-22, 34 and 36. Applicant has cancelled claims 9, 34, 49 and 52. Applicant has amended claims 1 and 55. Applicant respectfully requests reconsideration of pending claims 1-8, 10-33, 35-48, 50, 51 and 53-55.

The Examiner has objected to the abstract. Applicant has amended the abstract. Applicant submits no new matter has been added. Applicant submits the objection to the abstract has been obviated.

The Examiner has rejected claim 55 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,978,398, issued to Harper et al. Applicant respectfully disagrees.

Regarding claim 55, Applicant has amended claim 55. Applicant submits support for the amendment exists in the specification, for example, in paragraphs [0041]-[0048]. Therefore, Applicant submits no new matter has been added. Thus, Applicant submits claim 55 is in condition for allowance.

The Examiner has rejected claims 1-3, 5, 6, 10, 12-14, 19, 23, 27, 29-33, 35, and 54 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,978,398, issued to Harper et al in view of U.S. Patent No. 4,769,761 of Downes et al. Applicant respectfully disagrees.

Regarding claim 1, Applicant has amended claim 1 and canceled claim 34. Applicant submits support for the amendment exists in the specification, for example, in paragraphs [0018], [0019], [0024], [0027], [0033], and [0034]. Therefore, Applicant submits no new matter has been added. Thus, Applicant submits claim 1 is in condition for allowance.

Regarding claims 2, 3, 5, 6, 10, 12-14, 19, 23, 27, 29-33, and 35, Applicant reiterates Applicant's previously submitted arguments and also notes that such claims depend, directly or indirectly, from amended claim 1, which Applicant submits is now in condition for allowance. Thus, Applicant submits claims 2, 3, 5, 6, 10, 12-14, 19, 23, 27, 29-33, and 35 are also in condition for allowance.

Regarding claim 54, Applicant submits the cited portions of the cited references fail to render obvious the subject matter of claim 54. In the Examiner's Response to Arguments, the Examiner states as follows:

In response to teaching away, examiner is uncertain how the 'technique for error logging' appears to discard its 'exception log' when 'the exception log is cleared' causes the reference to teach away from such modification. Harper is concerned with detecting degradation of performance of a computer system (see column 1 lines 60-61), and a person of ordinary skill in the art could have been motivated to combine the teachings because monitoring the error count over a selected number of operations, as per teachings of Downes (see column 1 lines 60-65), constitutes as suitable known means to detect degradation of performance of a computer system. Argument is moot. Examiner maintains his rejection.

Applicant submits Downes' teaching as to clearing the "exception log" appears to delete the "error counts." Applicant submits, while the Examiner alleges "Downes discloses the concept of predicting a failure upon determination the error count over a selected number of operations is above a criterion or threshold (see column 1 lines 60-65)," deleting the "error counts" upon which Downes apparently depends would prevent "determining the rate of change of element demerit points..." even if the teachings of the cited portion of the Downes reference did disclose the subject matter alleged by the Examiner, which Applicant disputes.

As Applicant previously stated, as one example, Applicant submits the cited portions of the cited references fail to teach or suggest "identifying a failure predicted one of a plurality of protected system elements." While the Examiner cites, "(see column 2 lines 19-23)" and "(see column 4 lines 23-27)" of the Harper '398 reference, Applicant submits the cited portions of the cited reference recite "In a third aspect, a method (and system) of maintaining performance of a primary node in a computer system, includes monitoring the primary node of the computer system, determining whether the primary node is failing or about to fail, and migrating the state of the primary node to..." and "Indeed, in a cluster system having more than two nodes, the secondary node 101B may not know which primary node 101A is going to fail until the failure is predicted, so it cannot have the primary node's application already running." As another example, Applicant submits such portion of such reference fails to teach or suggest, for example, "a plurality of protected system elements." Rather, Applicant submits col. 2, lines 19-23, of the cited reference, as cited by the Examiner, appears to describe merely "...monitoring the primary node..., determining whether the primary node is failing or is about to fail...." Thus, Applicant submits claim 54 is in condition for allowance.

The Examiner has rejected claims 11, 24, 25, 26, and 28 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,978,398 of Harper '398 (which incorporates by reference Harper '398 '266) in view of U.S. Patent No. 4,769,761 of Downes and in further view of U.S. Patent No. 6,771,440 of Smith.

Regarding claims 11, 24-26, and 28, Applicant reiterates Applicant's previously submitted arguments and also notes that such claims depend, directly or indirectly, from amended claim 1, which Applicant submits is now in condition for allowance. Thus, Applicant submits claims 11, 24-26, and 28 are also in condition for allowance.

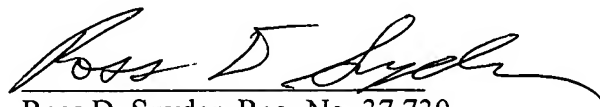
The Examiner states claims 37-48, 50, 51 and 53 are allowable. The Examiner has objected to claims 4, 7, 8, 15-18, 20-22, 34, and 36 as being dependent upon a rejected base claim, but states they would be allowable if rewritten in independent form. Applicant has presented arguments for the allowability of claims from which claims 4, 7, 8, 15-18, 20-22, 34, and 36 depend. Thus, Applicant submits claims 4, 7, 8, 15-18, 20-22, 34, and 36 are also in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date



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